

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.29078 of 2013

T.Kumaresan

... Petitioner

Vs.

1. The Registrar,
Central Administrative Tribunal,
High Court,
Chennai 600 104.
2. The Union of India,
rep. by the Secretary,
Ministry of Defence,
Government of India,
New Delhi.
3. Air Voice Marshal
Senior Officer Administration,
Head Quarters, Training Command,
Indian Air Force,
Bangalore - 560 006.
4. Air Commodore,
Air Officer Commanding,
413-Air Force, Tambaram,
Chennai 600 046.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the 1st respondent in O.A.No.1199 of 2012, dated 10.09.2013 and quash the same and consequently direct the respondents 2 to 4 to reinstate the petitioner with revised scale of pay on par with other employees with full backwages, continuity of service and all other attendant benefits.

For Petitioner : Mr.D.Bharathy
For Respondents 2 to 4 : Mr.S.Arockiam,
Central Govt. Standing
Counsel

O R D E R

(Order of the Court made by S.VAIDYANATHAN,J.)

The petitioner has come up with this Writ Petition seeking to quash the impugned order dated 10.09.2013 passed by the 1st respondent in O.A.No.1199 of 2012 and for a consequential direction to respondents 2 to 4 to reinstate him with revised scale of pay on par with other employees with full backwages, continuity of service and all other attendant benefits.

2. According to the petitioner, he joined the services of the 3rd respondent on 27.02.1981 as a Civilian Driver Grade - 2 and was discharging his duties efficiently and sincerely; he was promoted as Civilian Driver Grade - 1 from April 2004 and his last drawn scale of pay is Rs.13,000/- per month and he has put in 31 years of service in the 2nd respondent office.

3. The petitioner was issued with a charge memo dated 30.12.2009 containing four Articles of charges with regard to his absence from duty without permission/sanction of leave from the competent authority. Articles 1, 3 and 4 relate to the absence of the petitioner from 20.12.2008 to 26.05.2009 and Article 2 relates to the petitioner's absence from 07.12.2003 to 06.04.2004 and from 06.11.2006 to 04.09.2007, for which punishment was awarded. Pursuant thereto, the petitioner submitted his representation stating reasons for his absence. Thereafter, inquiry was conducted and the petitioner participated in the inquiry. The Inquiry Officer submitted his Report holding that all the charges were proved. Based on the Inquiry Officer's Report, the Disciplinary Authority imposed the punishment of compulsory retirement vide order dated 21.09.2011. Thereafter, the appeal submitted by the petitioner on 03.12.2011 got dismissed on 14.08.2012.

4. Being aggrieved over the punishment of compulsory retirement, the petitioner approached the Central Administrative Tribunal in O.A.No.1199 of 2012. The Tribunal, by an order dated 10.09.2013, placing reliance on the decisions of the Apex Court in the cases Government of Andhra Pradesh vs. Mohd. Nasrullah Khan, (2006) 2 SCC 373 and B.C.Chaturvedi vs. Union of India, 1995 (6) SCC 749, dismissed the case against the petitioner. Relevant portion of the said order would read thus:

14. Normally, the Tribunal cannot sit in appeal over the decisions of the Disciplinary Authority and Appellate Authority, which was taken after following the due procedure.

...
15. For the foregoing reasons, we are of the view that the applicant has not made out any case for our interference with the impugned order. The respondents have justified their action in imposing the punishment of compulsory retirement on the application. Therefore, we are of the view that the O.A. is devoid of any merit and liable to be dismissed."

5. According to the respondents, the petitioner was absent without sanction of leave on earlier occasions also (i) 06.10.2003 to 11.10.2003 - 6 days (ii) 07.12.2003 to 06.04.2005 - 119 days (iii) 06.11.2006 to 04.09.2007 - 301 days, for which punishments were imposed. It is their contention that though the petitioner was absent from 20.12.2008 to 26.05.2009 for 158 days without sanction of leave and he was directed to report for duty vide letters dated 07.01.2009, 10.02.2009 and 05.03.2009, he neither responded to the communications nor reported for duty. It is their further contention that even though the petitioner reported for duty on 27.05.2009, he submitted leave application without furnishing any medical certificate, after a lapse of 171 days, i.e. on 13.11.2009. His leave was not recommended by the office-in-charge on the grounds, (i) habitual long absentee; and (ii) leave application received without medical certificate despite reminders.

6. The respondents/Department, after considering the reply of the petitioner, conducted an Inquiry. During the course of inquiry, on 16.12.2010, the petitioner submitted a Medical Certificate dated 20.12.2008, i.e. after a lapse of two years, without substantiating his illness. As per Rule 19 of CCS (Leave) Rules, 1972, an application for medical leave should be accompanied by a Medical Certificate indicating the clear nature of illness and duration of leave required. But, in spite of repeated reminders, the petitioner had not rectified the observations till the order of compulsory retirement was passed.

Also, he did not produce Fitness Certificate. Based on materials available on record, the charges have been held to be proved against the petitioner. Further, in his reply statement, the petitioner himself has admitted the charges.

7. The Disciplinary Authority, on consideration of the proceedings and taking note of the habitual absence of the petitioner, imposed the punishment of compulsory retirement on the petitioner vide order dated 21.09.2011. Also, the

Appellate Authority vide order dated 14.08.2012 held that the inquiry was conducted in accordance with the rules and the petitioner was afforded ample opportunities during the inquiry. The Appellate Authority rejected the appeal upholding the order of the Disciplinary authority. Further, it is seen that in spite of several communications received by him, the petitioner did not report to the office to finalise his pension papers. Also, the petitioner has not vacated the Quarters in view of the compulsory retirement imposed on him.

8. The Tribunal has rightly held that it cannot sit in appeal over the decisions of the Disciplinary Authority and Appellate Authority, which were taken after following the due procedure. The number of days the petitioner worked is far less when compared to the actual number of working days, which the petitioner is expected to work during the calendar year. Previous records reveal that he is prone to habitual absenteeism. We are of the view that the decision of the Disciplinary Authority and the Appellate Authority as confirmed by the Tribunal in showing the doors to the petitioner is perfectly justified and it will not be in the interest of the Department to retain persons like that of the petitioner in Air Force service, where, discipline, punctuality and integrity is the norm.

9. The contention of the petitioner before this Court that he has not been given terminal benefits cannot be accepted. From the documents produced before this Court, it is very clear that the petitioner has been asked to report to the office to finalise his pension papers. The documents produced before this Court clearly show the sluggish attitude of the petitioner. He wakes up from slumber and blames the organisation for no fault of theirs.

10. In view of the above, this Court finds no merit in the plea. The respondents are directed to process the papers relating to terminal benefits and pension payable to the petitioner within a period of four weeks from the date of submission of necessary papers by the petitioner.

11. Though this is a fit case to impose costs, considering the plea of the learned counsel for the petitioner, we refrain from doing so.

This Writ Petition is dismissed. No costs.
Consequently, connected M.P.No.1 of 2013 is closed.

Aeb/sasi

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To :

1. The Registrar,
Central Administrative Tribunal,
High Court, Chennai 600 104.
2. The Secretary,
Ministry of Defence,
Government of India,
New Delhi.
3. The Air Voice Marshal
Senior Officer Administration,
Head Quarters, Training Command,
Indian Air Force,
Bangalore - 560 006.
4. Air Commodore,
Air Officer Commanding,
413-Air Force, Tambaram,
Chennai 600 046.

+ 1 cc to Mr.D.Bharathy, Advocate, SR 19144

+ 1 cc to Mr.S.Arokiam, ACGSC, SR 19104

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W.P.No.29078 of 2013

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